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THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

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Mr. Joseph A. Greenwald
Deputy Assistant Secretary
for International Trade Policy
U.S. Department of State
Washington, D. C. 20520

Dear Joe:

I appreciate the opportunity you afforded me to look over the Department of State draft proposals to revise the general license treatment of U.S. exports to Eastern Europe, and to delegate to the U.S. Delegate in Paris certain authorities with respect to COCOM exceptions and procedures.

Our reactions to these proposals are set forth in the Attachment to this letter. As indicated therein, some of the proposals would be acceptable in principle to the Department of Commerce. However, the remainder would, in my view, present problems that are substantial. In part, these problems arise from the factors of timing, statutory compliance, and quid pro quo that were explained to Secretary of State Dean Rusk by Acting Secretary of Commerce Alexander B. Trowbridge, in his letter of March 3, 1967, on the initial State Department proposals. In part, also, the problems stem from our lack of clarity regarding certain details of the proposals.

I believe it would be beneficial to have these proposals explored further. Under our regular procedure, your Department may submit them to the ACEP and EDAC structures for appropriate review. Whether or not you decide to do this, our respective staffs, together with those of the Departments of Defense and Treasury, could fruitfully explore the points mentioned in the Attachment to this letter, as well as such other points that may be raised by others. I am asking Mr. Rauer H. Meyer, Director, Office of Export Control, and Mr. Theodore L. Thau, Executive Secretary of the ACEP structure, to take this up with your staff.

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Yours sincerely,

Lawrence C. McQuade

Lawrence C. McQuade

Acting Assistant Secretary for Domestic
and International Business

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Attachment

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ATTACHMENT

I. Proposed Revision of ACEP Policy Determination No. 21

Proposal. This would liberalize and expand the general license treatment of U.S. exports to Eastern Europe, including the USSR. In particular, this would place under general licenses to these destinations (a) all non-COCOM commodities and their related technical data, except those items that the Operating Committee agrees to exclude on the basis of its review of items submitted by OC member agencies; and (b) non-COCOM items in individual shipments not exceeding \$200. License applications for COCOM items would be approved if prior clearance is not required.

General License G-DEST to Y Destinations. State proposes that there be placed under this general license all non-COCOM commodities, except those recommended by OC member agencies, and agreed by OC, for exclusion. This approach is the converse of our continuing program, under which commodities remain under validated export license control to Y destinations until, after ACEP structure review of each item on the basis of prescribed criteria and technical-strategic-intelligence advice, the Commerce Department determines that selected commodities should be placed under this general license.

The existing program has proved satisfactory in fulfilling essential administrative requirements, as well as statutory and policy commitments. Commerce is willing to consider other approaches, or improvements of the existing program. However, it does not regard the instant proposal as acceptable. Following are some of the reasons for this judgment.

The Export Control Act requires denial of an export to Eastern European Communist countries "if the President shall determine that such export makes a significant contribution to the military or economic potential of such nation or nations which would prove detrimental to the national security and welfare of the United States". It is not known what criteria and what kind of review would be used as a basis for the Operating Committee determinations under State's proposal. Unless there is a selective, item-by-item review under carefully prescribed criteria and guidelines, however, compliance with this statutory requirement might become questionable. Also, the State proposal implies a broad, pragmatic judgment that non-COCOM commodities generally do not merit validated license control to Eastern Europe. This would appear to be a denigration of strategic judgments made heretofore in regard to unilaterally controlled commodities. It would appear to reverse existing guidelines under which we maintain unilateral, validated license control over exports of commodities whose principal contribution to Eastern Europe we reasonably expect to be in the military sphere, or which contain extractable technology of military significance. The absence of adequate security safeguards vitiates the merit of the State proposal.

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State's proposal would appear to transfer to the Operating Committee and indeed to individual member agencies the decision-making authority that is now the responsibility of the Secretary of Commerce. It appears to permit any OC member to frustrate an action that all other members desire. Section 4(a) of the Act only provides for other departments and agencies to furnish "information and advice". Executive Order 10,945, provides that the responsibility for administering the Act shall be in the Secretary of Commerce.

Additionally, would not the State proposal prevent us from utilizing the general license treatment of significant items in bilateral discussions pursuant to an East-West Trade Relations Bill or otherwise with Eastern European countries as a bargaining measure in exchange for concessions by them as was done, for example, with the Rumanians in 1964.

General License GTDU. State proposes general license treatment of unpublished technical data relating to non-COCOM items to be exported to Y destinations. Presumably, this means that whenever any commodity is placed under general license G-DEST to Y destinations, the technical data related to that commodity will be placed under general license GTDU to the same destinations, also. This represents a radical departure from our historical concept of controlling technical data on a selective basis. Moreover, our policy premise has been, and still remains, that technology could well merit, in appropriate cases, a stricter control than the commodity to which it related. In part, this was based on the judgment that the export flow of commodities can be stopped when necessary, whereas if technology to produce these commodities is permitted to be exported, all control over the supply of commodities will be lost. The denial rule in the Export Control Act relates to technical data as well as to commodities. For these and other reasons Commerce is unable to accept this general proposal.

General Licenses Other Than G-DEST to Y Destinations. Commerce welcomes the opportunity to exchange views with State on possible revisions of some of these general licenses which have been overtaken by policy and other developments. Commerce has already submitted to the Operating Committee some suggested changes as an outgrowth of the PanAmerican-Aeroflot agreement. Also, Commerce has been considering the application of a limited GLV to commodity exports to Eastern Europe.

Nevertheless, changes should be made only after careful consideration and when there is a defensible basis for the changes. It is hardly suitable to make an arbitrary judgment that groups of commodities are not strategic,

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or that certain changes do not involve more than a calculated risk, without having a basis for the strategic judgment and without some estimate of the extent of the risk.

Other Questions. How will the State proposal affect the requirement of the Export Control Act regarding "economic" potential? What effect will the State proposal have on our policy of differential treatment of W countries (Poland and Rumania)?

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II. Proposed Delegation of Authority to USDEL

Proposal. To authorize the U.S. Delegate in Paris to (a) approve COCOM exceptions requests for exports to the USSR and Eastern Europe of any COCOM embargoed item, except those on the Battle Act Title I Category A List, if for peaceful and civil end-use; and (b) approve or propose COCOM procedural changes when the revised procedures will not affect embargo coverage. Also, the USDEL would be informed that Washington plans another COCOM List Review to be held in January 1968, with U.S. proposals to be submitted October 15, 1967, on the basis of a re-review of those proposals that would have been approved at the last COCOM List Review except for U.S. or French vetoes.

Exceptions Requests. As stated in the Attachment to Acting Secretary Trowbridge's letter of March 3, 1967, to Secretary Rusk, Commerce views delegations of authority to the USDEL in Paris to approve COCOM exceptions requests as being not needed (because they will not accelerate actions on COCOM exceptions requests for which there is an established 18-day period for PCs to respond) and as disadvantageous (because of the consequent discontinuance of the technical-intelligence review of each exception request by specialists in Washington).

Nevertheless, Commerce is willing to sit down with State, Treasury, and Defense, to ascertain whether there are certain COCOM embargo items that can and should be treated in this manner; and if so, subject to what conditions. Commerce believes that it would be more harmful than helpful to adopt this procedure for many COCOM embargo items, and that, even for those items for which the USDEL could be safely delegated approval authority, the imposition of certain conditions is needed for security reasons. Such conditions might relate to values or quantities in individual and cumulative exceptions, certain types of end-uses, and certain technical specifications or parameters. At the same time an explanation should be given the USDEL as to the kinds of questionable cases on which he should check with Washington.

Commerce would require that such delegations to the USDEL in Paris not cover, and not modify, Commerce's continuing regulations and controls over reexports to Communist destinations of U.S.-origin commodities and technical data, as well as exports to such destinations of products made abroad with U.S.-origin technology or incorporating components or parts of U.S.-origin.

Even excluding Battle Act Title I Category A items, it is estimated that State's proposed delegation would encompass more than 90% of all COCOM exceptions cases. It has not been indicated why this delegation should cover, as now proposed, all munitions items on IML, all atomic energy items on IAEL, and all items on II-I, regardless of the degree of their strategic importance. The broadness of this proposed delegation suggests an implied

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judgment that none of the COCOM embargo items is so strategically significant as to require a complete embargo to Eastern Europe and the USSR.

The State proposal appears to ignore the fact that COCOM exceptions cases are closely examined by the technical and intelligence competencies available in Washington, but not possessed by the U.S. Delegation in Paris. Even so, clear conclusions are often hard to reach on many exceptions cases. If we have these difficulties now with all our resources in Washington, should this responsibility be thrust upon the U.S. Delegation in Paris? Can the USDEL be safely relied upon to make proper judgments?

The fact that the United States subjects exceptions cases to thorough examination in Washington is known to the other COCOM participating governments. There is reason to believe this has been somewhat of a deterrent to their submission of voluminous and poorly justified exceptions. Were this blanket approval authority to be delegated to the USDEL and to become known to the other COCOM governments, however, it could lead to increased requests for unwarranted exceptions and, later, to decontrol proposals.

Among the purposes of the Washington review is the protection of extractable technology that might be readily usable for military applications. In this as well as other security regards, it is of little or no practical value to limit this proposed delegation to exceptions for "peaceful and civil end-uses". Commerce does not recall any exception request that was ever presented to COCOM with a contrary statement, and it does not believe any is likely to occur in the future.

Procedural Changes. Commerce deems it unnecessary and undesirable at this time to delegate to the USDEL in Paris the authority to approve or propose, without referral to Washington, COCOM procedural changes. So far as procedural changes in COCOM are concerned, Commerce is not aware of any problems or any undue delays that would warrant this proposed delegation.

State proposes to limit this delegated authority to those revised procedures that will not affect embargo coverage. It is not clear, however, what this means, or what is covered by the term "procedure". For example, would changes in Administrative Notes in embargo listings be considered substantive, not procedural? Commerce's concern arises from the fact that some procedural changes could significantly lessen the effective implementation of the COCOM embargo without affecting its coverage.

COCOM List Review. Intervening developments have overtaken the "FYI" on Washington plans for the next COCOM List Review. When the timing of a review was discussed recently in COCOM, the Japanese preferred January 1968, the British the second quarter 1968, and the French the Fall of 1968. Commerce has cleared State's message to the USDEL in Paris, advising that the second quarter 1968 is the earliest date that will enable adequate preparation, and that the Fall of 1968 is acceptable.

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III. Proposed Delegations to USDEL on Coaxial Cable
and Telephone Multiplex Equipment

Proposal. State proposes to authorize the U.S. Delegate in Paris to approve COCOM exceptions requests for exports to the USSR and Eastern Europe of (a) coaxial cable as described in IL 1525(c), if deliveries do not extend beyond twelve months from the date of contract, and if the amounts in individual transactions remain reasonable; and (b) certain specified types of frequency division multiplex communications equipment under IL 1523(a), if the recipient government provides an assurance of peaceful end-use, e.g., the type of end-use statement normally contained in an exception case.

Coaxial Cable. Commerce is prepared to accept a proposal on coaxial cable along the lines advanced by State.

Multiplex Equipment. Commerce is not prepared to accept, however, the proposal on communications multiplex equipment. We share the concern expressed [] about the strategic significance of high-capacity multiplex equipment to the Eastern European countries and the USSR. Accordingly, Commerce does not agree to abandon at this time the security advantages afforded by the review of each exception case for this equipment by technical and intelligence specialists in Washington. Should it be determined at some future time to relax the COCOM embargo in whole or in part on this equipment, or to change our review procedure for exceptions, this should be based on demonstrably justifiable strategic or foreign policy grounds. Also, since this equipment is produced by a good many COCOM countries, in addition to the United Kingdom, any relaxation on this item should be considered as part of a larger package with which to seek quid pro quo.

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